



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

200730023

APR 30 2007

Uniform Issue List: 408.03-00

TEP: RA

Legend:

Taxpayer A=

Amount B=

IRA C=

Bank D=

Bank E=

Date 1=

Date 2=

Date 3=

Dear :

This is in response to your letter dated , supplemented by letters dated , , and, submitted by your authorized representative, for a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code ("the Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

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Taxpayer A, age , represents that she received a distribution from IRA C totaling Amount B. Taxpayer A asserts that her failure to accomplish a rollover within the 60-day period prescribed by 408(d)(3) was due to her misunderstanding with personnel of Bank D and Bank E.

Taxpayer A was married and her husband passed away on Date 1, and as beneficiary of her late husband's IRA with Bank D, Taxpayer A established IRA C with Bank D. On Date 2, Taxpayer A decided to move Amount B from IRA C to Bank E. While at Bank D trying to complete a wire transfer to Bank E, Taxpayer A indicates in an affidavit that the Bank D employee assisting her seemed inexperienced and asked colleagues for guidance to make the transfer to Bank E. Bank D issued a cashier's check to Taxpayer A for Amount B instead of making the wire transfer. Taxpayer A did not have an IRA at Bank E. Taxpayer A accepted the cashier's check and took it to Bank E on Date 2 where Amount B was used to purchase a non-IRA certificate of deposit instead of establishing a rollover IRA. Taxpayer A states that when she went to Bank E she was not directed to the correct office in Bank E to establish an IRA-CD. In contrast, documentation from Bank E states that, in speaking with Taxpayer A on Date 2 concerning the IRA withdrawal from Bank D, Taxpayer A was not knowledgeable in this area and proceeded to open a trust account. Taxpayer A represents that Amount B has not been used for any other purpose.

Based on the above facts and representations, you request that the Service waive the 60-day rollover requirement with respect to Amount B.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines, and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if—

- (i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or
- (ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the

payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359, provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information and documentation submitted does not show any evidence to the Service as to how any of the factors outlined in Rev. Proc. 2003-16 affected your ability to timely roll over Amount B. The information presented does not demonstrate circumstances that would justify a waiver of the 60-day rollover period pursuant to section 408(d)(3)(I) of the Code. The Committee Report describing legislative intent indicates that the Congress enacted the rollover provisions to allow portability between eligible plans including IRAs. Under the circumstances presented, the failure to waive the 60-day requirement would not be against equity or good conscience as that term is used in section 408(d)(3)(I).

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Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby declines to waive the 60-day rollover requirement with respect to the distribution of Amount B.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this ruling is being sent to your authorized representative in accordance with a power of attorney on file with this office.

If you wish to inquire about this ruling, please contact _____, at _____
Please address all correspondence to _____.

Sincerely yours,

Ada Perry

for

, Manager
Employee Plans Technical Group 4

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose

cc: